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<b>R.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1281</b>
	)	<b>Issued: March 6, 2019</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp;</b>	)	
<b>DISTRIBUTION CENTER, Garden City, NY,</b>	)	
<b>Employer</b>	)	
	)	

*Case Submitted on the Record*

## DECISION AND ORDER

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

## JURISDICTION

On June 12, 2018 appellant, through counsel, filed a timely appeal from a May 30, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish a traumatic injury causally related to the accepted March 9, 2017 employment incident.

### **FACTUAL HISTORY**

On March 9, 2017 appellant, then a 47-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that he injured his back when [l]ifting mail bags in the performance of duty. He stopped work on that day.

In a March 10, 2017 work status note, Dr. Moiz Manaqibwala, a treating orthopedic surgeon, noted a March 9, 2017 date of injury and a diagnosis of right triangular fibrocartilage complex (TFCC) tear. He advised that appellant was unable to return to work until further notice. Appellant was scheduled for a follow-up evaluation on March 22, 2017.

By letter dated March 21, 2017, the employing establishment controverted appellant's claim. It noted that the medical evidence submitted did not mention a back injury, but a right TFCC tear, which was normally associated with an arm/wrist injury.

OWCP subsequently received a March 10, 2017 examination note from Dr. Manaqibwala, who related that appellant was seen for complaints of back pain radiating into his legs after lifting 70-pound bags at work yesterday. Dr. Manaqibwala reviewed appellant's history and noted that appellant had cervical fusion surgery in 2012. Upon examination of appellant's back, Dr. Manaqibwala reported bilateral lumbar paraspinal tenderness, midline lumbar tenderness, and diminished range of motion in all planes. Straight leg raise testing was positive on both sides. Neurological testing was intact throughout both lower extremities. Dr. Manaqibwala reported that x-rays of the lumbar spine demonstrated straightening consistent with spasm and disc space narrowing. He diagnosed lumbar paraspinal muscle spasm and lumbar herniated nucleus pulposus (HNP).

In a March 22, 2017 examination note, Dr. Manaqibwala indicated that appellant was seen for follow-up of back pain. He provided examination findings similar to his previous examination and diagnosed lumbar HNP and lumbar paraspinal muscle spasm. Dr. Manaqibwala completed a duty status report (Form CA-17), which indicated that appellant was totally disabled.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the May 30, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Dr. Manaqibwala also completed a March 27, 2017 work capacity evaluation form (OWCP-5c), which noted a diagnosis of lumbar herniated disc and severe radicular back pain. He checked a box marked “no” indicating that appellant was unable to work.

By development letter dated April 11, 2017, OWCP informed appellant of the type of factual and medical evidence needed to establish his claim. It provided a questionnaire for his completion and requested a narrative medical report from a physician, which included a diagnosis and a rationalized opinion on causal relationship. It afforded appellant 30 days to submit the necessary evidence.

On May 2, 2017 appellant responded that he did not have any similar disabilities or symptoms before the claimed March 9, 2017 employment injury.

Appellant also submitted additional medical reports from Dr. Manaqibwala. In an April 19, 2017 follow-up examination note and duty status report (Form CA-17), Dr. Manaqibwala related that appellant’s pain was improving and that he remained off work. He provided examination findings similar to his previous reports and diagnoses of lumbar strain, lumbar HNP, and lumbar sprain.

In an April 26, 2017 note, Dr. Manaqibwala diagnosed a lumbar paraspinal muscle spasm. He opined that “the incident described by the patient was the competent medical cause of the injury.” Dr. Manaqibwala explained that appellant’s complaints and history of injury were consistent with his objective findings and with the injury.

By decision dated May 12, 2017, OWCP denied appellant’s claim. It accepted that the March 9, 2017 incident occurred as alleged, but denied the claim finding that the medical evidence of record was insufficient to establish that appellant’s diagnosed lumbar conditions and TFCC tear were causally related to the accepted March 9, 2017 employment incident.

On June 13, 2017 appellant requested a review of the written record by an OWCP hearing representative. In an undated statement, he asserted that, on March 9, 2017, he was injured on the job while lifting a 70-pound bag. Appellant noted that his doctor’s notes indicated that his injury was consistent with his work.

In a May 25, 2017 narrative report, Dr. Manaqibwala related that he first treated appellant on March 10, 2017 for back pain radiating into his legs after lifting 70-pound bags of mail at work on March 9, 2017. He noted that appellant had no previous back injuries, but had undergone cervical fusion surgery in 2012. Dr. Manaqibwala reported that lumbar spine x-rays demonstrated straightening consistent with spasm and disc space narrowing and degenerative joint disease. He described his treatment of appellant. Dr. Manaqibwala diagnosed lumbar paraspinal muscle spasm and lumbar HNP. He opined that appellant’s diagnosed conditions were causally related to the work incident on March 9, 2017.

OWCP received additional medical reports from Dr. Manaqibwala dated May 31 to August 23, 2017. Dr. Manaqibwala indicated that appellant continued to complain of back pain, although it had improved. He again provided examination findings similar to his previous findings and diagnoses of lumbar paraspinal muscle spasm and lumbar HNP. Dr. Manaqibwala completed

a May 31, 2017 duty status report (Form CA-17), which indicated that appellant was unable to work.

By decision dated October 2, 2017, an OWCP hearing representative affirmed the May 12, 2017 decision. He found that the medical evidence submitted was insufficient to establish that appellant's lumbar and wrist conditions were causally related to the accepted March 9, 2017 employment incident.

On March 8, 2018 appellant, through counsel, requested reconsideration. Counsel noted that he planned to submit a new medical report, dated February 5, 2018, which contained a rationalized opinion demonstrating causal relationship between appellant's diagnosed medical conditions and the March 9, 2017 employment incident.

Appellant continued to receive medical treatment from Dr. Manaqibwala. In reports dated October 18, 2017 to March 28, 2018, Dr. Manaqibwala noted appellant's continued symptoms of improving back pain. He accurately described the March 9, 2017 employment incident and provided examination findings similar to his previous reports. Dr. Manaqibwala diagnosed lumbar paraspinal muscle spasm, lumbar HNP, and lumbar radiculopathy.

In a February 5, 2018 note, Dr. Manaqibwala related his first treatment of appellant on May 10, 2017 and described the May 9, 2017 employment incident. He provided appellant's initial examination findings and a detailed description of appellant's follow-up examinations. Dr. Manaqibwala diagnosed lumbar paraspinal muscle spasm, lumbar HNP, and lumbar radiculopathy. He opined that appellant's lumbar spine injury was causally related to appellant's lifting of heavy mail while at work on March 9, 2017. Dr. Manaqibwala explained that appellant's symptoms and examination findings were subsequent to his injury and consistent with a diagnosis of lumbar HNP with nerve root irritation. He reported that he had no evidence to believe that this was due to a preexisting condition.

In a February 28, 2018 narrative statement, appellant explained that on March 9, 2017 he went to work and was lifting and weighing 70-pound bags of mail. He related that upon lifting a 70-pound bag of mail approximately 5 hours and 55 minutes into his shift, he felt a sudden pain in his lower back and increasing numbness and pain radiating down his legs.

By decision dated May 30, 2018, OWCP denied modification of the October 2, 2017 decision. It found that the new medical reports by Dr. Manaqibwala failed to explain how the lifting incident on March 9, 2017 caused or contributed to his lumbar injury.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is

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<sup>4</sup> *Supra* note 2.

causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>7</sup> Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>8</sup> The second component is whether the employment incident caused a personal injury.<sup>9</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the accepted incident.<sup>10</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>11</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>12</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted March 9, 2017 employment incident.

Appellant submitted several reports by Dr. Manaqibwala dated March 10, 2017 to March 28, 2018. In a March 10, 2017 work status report, Dr. Manaqibwala diagnosed right TFCC tear, with a March 9, 2017 date of injury. He did not opine as to the cause of injury, nor did he subsequently repeat the right wrist diagnosis. Medical evidence that does not offer an opinion

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<sup>5</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>6</sup> *S.G.*, Docket No. 18-1373 (issued February 12, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>8</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>11</sup> *T.H.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>12</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>13</sup> *Id.*

regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>14</sup>

In his March 10, 2017 narrative report, Dr. Manaqibwala described that on March 9, 2017 appellant experienced back pain radiating into his legs after lifting a 70-pound bag at work. Upon initial examination of his lumbar spine, he reported bilateral lumbar paraspinal tenderness, midline lumbar tenderness, and diminished range of motion in all planes. Straight leg raise testing was positive on both sides. Dr. Manaqibwala reported that x-ray examination of the lumbar spine demonstrated straightening consistent with spasm and disc space narrowing. He diagnosed lumbar paraspinal muscle spasm and lumbar HNP. In a February 5, 2018 narrative report, Dr. Manaqibwala opined that appellant's lumbar spine injury was causally related to appellant's lifting of heavy mail at work on March 9, 2017. He explained that appellant's symptoms and examination findings were subsequent to his injury and was consistent with his diagnosis. Dr. Manaqibwala reported that he had no reason to believe that appellant's current symptoms were due to a preexisting condition. Although these reports contain an affirmative opinion on causal relationship, the Board finds that they are of diminished probative value because they do not contain sufficient medical rationale explaining how lifting 70-pound bags of mail at work caused or contributed to appellant's lumbar condition.<sup>15</sup> Therefore, these reports are insufficient to establish the claim.

On appeal, counsel argues that Dr. Manaqibwala's February 5, 2018 report contained a reasoned medical opinion establishing causal relationship between the accepted March 9, 2017 employment incident and appellant's diagnosed lumbar condition. As explained above, this report lacks rationale and is, therefore, insufficient to establish causal relationship.

In order to obtain benefits under FECA an employee has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>16</sup> Because appellant has not provided sufficient evidence demonstrating that his diagnosed conditions were causally related to the accepted March 9, 2017 employment incident, he has not met his burden of proof to establish his traumatic injury claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted March 9, 2017 employment incident.

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<sup>14</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>16</sup> *Supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board